Before the FEDERAL COMMUNICATIONS COMMISSION Washington, D.C. 20554

In the Matter of) Charlton County School System
) Billed Entity Number 127480
Requests for Review of) Funding Year 2011
Decisions of the) Form 471 Application No. 805658
Universal Service Administrator by) Funding Request Nos. 2203806 and) 2203827
Charlton County School System)
Schools and Libraries Universal Service Support Mechanism) CC Docket No. 02-6

ATT: Telecommunications Access Policy Division Wireline Competition Bureau

REQUEST FOR REVIEW

Charlton County School System ("Charlton"), by its Director of Technology and pursuant to Sections 54.719(c) and 54.722(a) of the Federal Communications

Commission's ("FCC" or "Commission") rules, hereby petitions the Commission's

Wireline Competition Bureau for review of adverse decisions by the Universal Service

Administrative Company ("USAC") with respect to Funding Request Nos. 2203806 and 2203827 for funding year 2011.

I. Background

On September 28, 2010, the USAC issued a Funding Commitment Decision

Letter ("FCDL") denying Charlton's E-Rate application for funding year 2010.² On

September 29, 2010, USAC issued a FCDL denying Charlton's E-Rate application for

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⁴⁷ C.F.R. §§ 54.719(c), 54.722(a).

Funding Commitment Reports from USAC, Schools and Library Division (dated Sept. 28, 2010) (regarding FY 2010, FCC Form 471 Application No. 742443, FRNs 2023430 and 2023445).

funding year 2009.³ The FCDL for funding year 2010 states that the funding request was denied because Charlton "did not conduct a fair and open competitive bidding process," "engaged in numerous meetings, e-mail discussions, and/or verbal discussions with Trillion employees prior to the posting of the Form 470 and throughout the competitive bidding process," and "Trillion was consulted and/or offered details about services and products" requested on the Form 470. The FCDL for funding year 2009 raises the same concerns as the FCDL for funding year 2010 and, in addition, states that Charlton accepted "either gifts, meals, gratuities, or entertainment from the service provider, which resulted in a competitive process that was no longer fair and open...."

On November 17, 2010, Charlton filed with the Commission an appeal of USAC's decisions denying Charlton's applications for funding years 2009 and 2010.⁴ On November 19, 2010, Charlton's service provider (Trillion Partners, Inc.) ("Trillion") also filed appeals of USAC's decisions denying Charlton's applications for funding years 2009 and 2010. On February 23, 2012, the Commission issued an order (hereinafter, the "Order") denying the appeals filed by Charlton and Trillion.⁵ On March 23, 2012, Charlton and Trillion each filed petitions for reconsideration of the Order.⁶ Those petitions for reconsideration remain pending.

Funding Commitment Reports from USAC, Schools and Library Division (dated Sept. 29, 2010) (regarding FY 2009, FCC Form 471 Application No. 658765, FRNs 1842340 and 1842292).

Letter from Sandra Slater, Ed.D, Director of Technology, Charlton County School System, to Federal Communications Commission, CC Docket No. 02-6 (dated Nov. 17, 2010) (regarding FCC Form 471 Application Nos. 658765 and 742443) ("Charlton Appeal") (Attached as Exhibit A).

Requests for Waiver and Review of Decisions of the Universal Service Administrator by Charlton County School System, Folkston, Georgia, et al., File Nos. SLD-658765, et al.; Schools and Libraries Universal Service Support Mechanism, CC Docket No. 02-6, DA 12-260, Order, 27 FCC Rcd 2010 (2012).

Charlton County School System, Petition for Reconsideration, CC Docket No. 02-6 (filed Mar. 23, 2012) ("Charlton Petition for Reconsideration") (Attached as Exhibit B); *see also* Trillion Partners, Inc., Petition for Reconsideration re Charlton County School System, CC Docket No. 02-6 (filed Mar. 23, 2012) ("Trillion's Petition for Reconsideration").

On December 5, 2012, USAC issued two FCDLs denying Charlton's Funding Request Nos. 2203806 and 2203827 for funding year 2011 (hereinafter, the "2011 Applications"). The FCDLs state that the 2011 Applications were denied for the following reason:

Consistent with FCC Order DA 12-260, the FCC has determined that your competitive bidding process was flawed due to improper service provider involvement in the competitive bidding process that lead to this contract. Therefore, funding is denied.⁷

The 2011 Applications arise out of the same competitive bidding processes that is currently under review by the FCC due to USAC's denials of the applications for funding years 2009 and 2010. As Charlton argued in its petition for reconsideration, the competitive bidding process that resulted in the award of a contract to Trillion for funding years 2009 and 2010 was conducted in a fair and open manner and was not tainted in any way. Thus, the FCC erred in the Order denying the appeals for funding years 2009 and 2010 and USAC perpetuates this error by relying on the Order to deny the 2011 Applications.

II. Charlton Conducted a Fair and Open Competitive Bid Process.

The Order states: "Based on our review of the record, we find that petitioners violated the Commission's competitive bidding requirements..." and that such denial is "consistent with precedent." The Order, however, does not identify the specific communications that it found to be improper or the gifts, meals, gratuities, or entertainment that allegedly resulted in a competitive process that was no longer fair and

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Funding Commitment Report from USAC, Schools and Libraries Division (dated Dec. 5, 2012) (regarding Charlton County School System, FY 2011, FCC Form 471 Application No. 805658, FRN 2203806); Funding Commitment Report from USAC, Schools and Libraries Division (dated Dec. 5, 2012) (regarding Charlton County School System, FY 2011, FCC Form 471 Application No. 805658, FRN 2203827) (both FCDLs attached as Exhibit C).

⁸ *Order*, 27 FCC Rcd at 2010-2011, ¶ 1.

open. Therefore, Charlton is unable to address the concerns the Commission had about communications and gifts. Nevertheless, Charlton conducted a transparent, open and competitive bid process entirely free from conflicts of interest or undue influence and in compliance with state procurement laws and regulations.

On October 29, 2008, Charlton posted its Form 470 on USAC's website (FCC Form 470 No. 757500000691055) for funding year 2009 describing the types of products and services desired and for which bids would be accepted. Charlton's Form 470 was signed by Sandy Slater, Charlton's Technology Director, who also served as Charlton's contact person. The posting of the Form 470 established an allowable contract date of November 26, 2008. After the Form 470 was posted, Charlton received only one bid - Trillion's. Charlton carefully evaluated this bid, confirmed that the bid provided a cost-effective solution, and waited the requisite 28-days before selecting Trillion as its service provider. The competitive bidding process that resulted in the award of a contract to Trillion beginning in FY 2009 was conducted in a fair and open manner and was not tainted in any way.

In an Intent to Deny Letter dated June 4, 2010, USAC referenced meetings and emails between Charlton and Trillion employees in October 2008, prior to the posting of the Form 470. However, the communication between Charlton and Trillion prior to the posting of the Form 470 did not violate the competitive bid rules. As explained in Charlton's appeal dated November 17, 2010 and in Trillion's appeal dated November 19, 2010, Trillion was Charlton's incumbent service provider and much of this

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Charlton County School System, Form 470 Application Number 757500000691055 (posted on October 29, 2008), available at: http://www.slforms.universalservice.org/Form470Expert/PrintPreviewFY8.aspx?appl_id=691055&fy=200 9&src=search (last visited Jan. 24, 2013).

communication pertained to the existing contract between the parties and whether certain upgrades to the system could be implemented under the existing contract. After clarifying that the system upgrades were not provided for in the existing contract, Charlton established a competitive bidding process to obtain the needed services and equipment, all as required by the Commission's rules. Throughout this process, Charlton obeyed all of the bidding regulations of the Georgia Department of Education.

The correspondence between Charlton and Trillion was appropriate given the existing vendor-customer relationship. The FCC has acknowledged that prior to the posting of the Form 470, "[a] service provider may provide information to an applicant about products or services – including demonstrations." Charlton corresponded with Trillion as part of its investigation into what equipment and services were needed to upgrade the system to meet both existing and future needs of Charlton students.

Charlton, as an applicant, is required by FCC precedent to do its "homework" to confirm that the equipment and services it requests on a Form 470 will meet its technology plan goals and be an efficient use of the E-rate funds. 11

Charlton also submits the following facts for the Commission's consideration: (1) Charlton, not Trillion, prepared, signed and submitted the Form 470 and certification; (2) Charlton's Technology Director, not a Trillion employee, was listed as the contact person on the Form 470; (3) neither Trillion nor any other service provider participated in the bid evaluation and vendor selection process in any way; (4) Charlton did not turn over to Trillion or any other service provider the responsibility for ensuring a fair and open

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Schools and Libraries Universal Service Support Mechanism; A National Broadband Plan for Our Future, FCC 10-83, Notice of Proposed Rulemaking, 25 FCC Rcd 6872, ¶ 30 (2010).

Request for Review of the Decision of the Universal Service Administrator by Ysleta Independent School District, El Paso, Texas, et al, FCC 03-313, Order, 18 FCC Rcd 26406, 26423 (2003).

competitive bidding process; (5) no Charlton employee had an ownership interest in Trillion or any other interested bidder; and (6) Charlton's Form 470 described the supported services with sufficient specificity to enable interested service providers to submit responsive bids. In sum, the alleged communications, that contain no evidence of inappropriate service provider involvement in the preparation or certification of the Form 470, did not taint the competitive bidding process.

III. The Alleged "Gifts" Did Not Violate the Commission's Rules.

As previously noted, USAC's denial of the applications for funding year 2009 does not specify which "gifts, meals, gratuities or entertainment" were of concern to USAC. Therefore, Charlton can only assume that USAC's decisions were based on allegations raised in USAC's Intent to Deny Letter. The Intent to Deny Letter questions a meal attended by a Trillion employee and Dr. Slater on October 28, 2008, and states: "Dr. Slater had several business lunches and dinners with Trillion Partner representatives prior to the competitive bidding process." 12

Those meals did not violate the Commission's rules. The meals were for insignificant amounts (the cost ranged from \$5.40 to \$36.44 per person) and took place over an eight-month period. In addition, the meals were not received by an employee with authority to bind Charlton to a contract with Trillion or affect the competitive bidding decision. During the time period involved in the applications for funding year 2009, the only standard provided by USAC training materials regarding gifts was that applicants and service providers were to comply with state contract law and state and

Exhibit C (Intent to Deny Letter) to Trillion's Petition for Reconsideration, at 1-2.

Exhibit D (Trillion Expense Summary) to Trillion's Petition for Reconsideration.

local procurement laws. In this case, Charlton followed all state procurement laws.¹⁴ Furthermore, the meals took place in 2008 and early 2009, well before the Commission's gift rules became effective in January 2011. Consistent with the Division's decision in the <u>Dimmitt</u> order, none of these meals influenced or compromised the bidding process.¹⁵

IV. The Cases Cited in the Order do not Support a Denial of Funding.

The Order states that the FCC's decision was "consistent with precedent," but the cited cases (Mastermind, ¹⁶ Dickenson ¹⁷ and Approach Learning ¹⁸) do not support a denial of funding on the facts in this case. Those cases address a situation in which an applicant's Form 470 lists a service provider employee as the applicant's contact person, which is not the case here.

V. <u>Conclusion</u>

The competitive bidding process that resulted in the award of a contract to Trillion for funding year 2009 was conducted in a fair and open manner. The communications between Charlton and Trillion, that contain no evidence of inappropriate service provider involvement in the preparation or certification of the Form 470, did not taint the competitive bidding process. Furthermore, the alleged meals did not influence or compromise the bidding process. Therefore, USAC erred when it denied the 2011 Applications. If not reversed, the loss of funding will be devastating to Charlton. It would cause a severe hardship to the entire Charlton school system and impede the

Charlton Appeal at 1 (stating that "Charlton County has complied with the proper rules and regulations for the district").

Dimmitt Independent School District, DA 11-1854, Order, 26 FCC Rcd 15581 (2011).

Mastermind Internet Services, Inc., Order, 16 FCC Rcd 4028 (2000).

Dickenson County Public Schools, Order on Reconsideration, 17 FCC Rcd 15747 (2002).

Approach Learning and Assessment Center, Order, 22 FCC Rcd 5296 (2007).

students' ability to access technology that is essential to their education. Moreover, since

the infrastructure belongs to Trillion, another service provider would have to replace the

entire infrastructure or purchase it from Trillion. Under these circumstances, it would be

extremely unlikely that Charlton could find another provider willing to serve Charlton.

Recall that only one provider bid on the contract at issue — Trillion. Therefore, Charlton

respectfully requests grant of this Petition for Review.

Respectfully submitted,

CHARLTON COUNTY SCHOOL SYSTEM

By: <u>/s/ Sandra Slater</u>

Sandra Slater, Ed.D Director of Technology

Charlton County School System

1259 Third Street

Folkston, GA 31537

Dated: January 31, 2013

EXHIBIT A

Appeal by Charlton County School System, CC Docket No. 02-6 (dated Nov. 17, 2010) (regarding FCC Form 471 Application Nos. 658765 and 742443)

Charlton County Board of Education

Board Members: Dr. Matthew P. Sands Mrs. Lucille Hannans Mr. Pender Lloyd Mr. Curtis Nixon Mr. Joey Chancy 1259 Third Street Folkston, GA 31537 (912) 496-2596 Fax: (912) 496-2595 Superintendent Mr. Alexander S. McQueen Associate Superintendent Dr. John D. Lairsey

November 17, 2010

Re: Charlton County School System and Trillion Partners, Inc.

BEN: 127480

Form 471: 658765 & 742443

This letter will explain the position of the Charlton County School System Technology Department relative to the determination of the PIA reviewer for filling years 2009-2010 and 2010-2011. First, we have and always have followed the rules set by the Schools and Libraries Department regarding the filing for Erate funding. Our impeccable record with the department over the years evidences this.

Secondly, the Technology Department understands that new technology not under contract would need to be offered for bid to outside vendors. The school district currently has existing annual and multi-year contracts with both public and private companies numbering in the double digits specifically for technology. The Technology Department did discuss with Trillion the replacement of equipment that was thought to be under contract that was no longer up to current standards. Charlton County School System was and is under a five-year contract with Trillion and according to our understanding, and led to believe Trillion was in agreement, able to replace old equipment or upgrade through this vendor without the need for putting the project up-for-bid.

Thirdly, we never considered this a bid process until discussions and additional communications with Trillion suggested otherwise. If this upgrade of equipment is considered an item up- for- bid, Charlton County has complied with the proper rules and regulations for the district as the 470 was posted for receiving bids and no other bids were received for these items.

We request that you reconsider your position, as this decision would cause a severe hardship on our school system, community and impede our student's ability to access the future technology so important for their current and future education.

Thank you for your time, understanding and consideration.

Sincerely,

Sandra Slater, Ed.D Director of Technology

Charlton County School System

Cc: Mr. Steve McQueen, Superintendent

EXHIBIT B

Petition for Reconsideration by Charlton County School System, CC Docket No. 02-6 (filed March 23, 2012)

Before the FEDERAL COMMUNICATIONS COMMISSION Washington, D.C. 20554

In the Matter of)
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Requests for Waiver and Review of)
Decisions of the)
Universal Service Administrator by)
)
Charlton County School System) File Nos. SLD-658765 and
Folkston, Georgia) 742443
)
Schools and Libraries Universal Service) CC Docket No. 02-6
Support Mechanism)

PETITION FOR RECONSIDERATION

Charlton County School System (the "System") through the undersigned and pursuant to Section 1.106 of the Federal Communications Commission's ("FCC" or "Commission") rules, hereby petitions the Telecommunications Access Policy Division ("Division") of the Commission's Wireline Competition Bureau for reconsideration of the above-captioned Order. This Petition is filed in conjunction with the Petition for Reconsideration ("Trillion's Petition") filed by Trillion Partners, Inc. ("Trillion") for reconsideration of the above-captioned Order. Trillion has set forth in detail the procedural and factual history of this matter in Trillion's Petition. The System will not restate that history here and instead incorporates Trillion's Petition by reference as if fully set forth herein.

⁴⁷ C.F.R. § 1.106.

Requests for Waiver and Review of Decisions of the Universal Service Administrator by Charlton County School System, Folkston, Georgia, File Nos. SLD-658765, et al.; Schools and Libraries Universal Service Support Mechanism, CC Docket No. 02-6, DA 12-260, Order (Telecommunications Access Policy Division, rel. Feb. 23, 2012) ("Order").

On November 17, 2010, the System filed with the Commission an appeal of USAC's decisions denying the System's applications for funding years 2009 and 2010 (the "Appeal"). ³ On February 23, 2010, the Division issued the *Order*, consisting of two-paragraphs, denying the Appeal. ⁴ The Appeal is incorporated herein by reference.

The competitive bidding process that resulted in the award of a contract to Trillion for funding years 2009 and 2010 was conducted in a fair and open manner and was not tainted in any way. The *Order* erred in concluding, without a review of the System's or Trillion's arguments and evidence, that there was a violation of the Commission's rules. Furthermore, the communications and meals at issue did not violate the Commission's rules. The loss of funding will be devastating to the System.

For all of the reasons set forth in Trillion's Petition and the Appeal, the System respectfully requests that the Division reconsider the *Order* and grant the Appeal.

Letter from Sandra Slater, Ed.D., Director of Technology, Charlton County School System, to Federal Communications Commission, CC Docket No. 02-6 (dated Nov. 17, 2010) regarding FCC Form 471 applications 658765 and 742443).

⁴ Order, \P 1.

Respectfully submitted,

Charlton County School System

By:

Sandra Slater, Ed.D Director of Technology Charlton County School System 1259 Third Street Folkston, GA 31537

March 21, 2012

Your submission has been accepted

ECFS Filing Receipt - Confirmation number: 2012323007103 Proceeding Subject Name In the Matter of Schools and Libraries 02-6 Universal Service Support Mechanism Contact Info -Name of Filer: Charlton County School System Attorney/Author Name: Sandra Slater, Ed.D Address Address For: Filer Address Line 1: 1259 Third Street City: Folkston State: GEORGIA **Zip:** 31537 **Details** Type of Filing: PETITION FOR RECONSIDERATION Document(s) File Name **Custom Description** Size Charlton Petition for Recon 3-23 Charlton Petition for 90 -2012.pdf Reconsideration KΒ Disclaimer This confirmation verifies that ECFS has received and

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EXHIBIT C

Funding Commitment Reports from USAC denying:

FY 2011, FCC Form 471 Application No. 805658, FRN 2203806, and FY 2011, FCC Form 471 Application No. 805658, FRN 2203827

FUNDING COMMITMENT REPORT Service Provider Name: Trillion Partners, Inc SPIN: 143025872 Funding Year: 2011

Name of Billed Entity: CHARLTON COUNTY SCHOOL SYSTEM

Billed Entity Address: 1259 THIRD. STREET

Billed Entity City: FOLKSTON
Billed Entity State: GA
Billed Entity Zip Code: 31537-3710
Billed Entity Number: 127480

Contact Person's Name: Dr. Sandy Slater Preferred Mode of Contact: EMAIL

Contact Information: sslater@charlton.k12.ga.us

Form 471 Application Number: 805658 Funding Request Number: 2203806 Funding Status: Not Funded

Category of Service: Telecommunications Service Form 470 Application Number: 757500000691055

Contract Number: n/a

Billing Account Number: N/A Service Start Date: 07/01/2011

Contract Expiration Date: 06/30/2019

Number of Months Recurring Service Provided in Funding Year: 12 Annual Pre-Discount Amount for Eligible Recurring Charges: \$136,728.00 Annual Pre-Discount Amount for Eligible Non-Recurring Charges: \$.00

Pre-Discount Amount: \$136,728.00

Applicant's Discount Percentage Approved by SLD: 87%
Funding Commitment Decision: \$.00 - Bidding Violation- SRC
Funding Commitment Decision Explanation: MR1: FRN modified in accordance with a RAL request. <><><> MR2: The establishing Form 470 Application Number was changed at the request of the applicant. <><><> Consistent with FCC Order DA 12-260, the FCC has determined that your competitive bidding process was flawed due to improper service provider involvement in the competitive bidding process that lead to this contract. Therefore, funding is denied.

FCDL Date: 12/05/2012 Wave Number: 071

Last Allowable Date for Delivery and Installation for Non-Recurring Services: 09/30/2013

Consultant Name:

Consultant Number (CRN):

Consultant Employer:

FUNDING COMMITMENT REPORT Service Provider Name: Trillion Partners, Inc SPIN: 143025872

Funding Year: 2011



Name of Billed Entity: CHARLTON COUNTY SCHOOL SYSTEM Billed Entity Address: 1259 THIRD. STREET

Billed Entity City: FOLKSTON

Billed Entity State: GA Billed Entity Zip Code: 31537-3710 Billed Entity Number: 127480

Contact Person's Name: Dr. Sandy Slater

Preferred Mode of Contact: EMAIL

Contact Information: sslater@charlton.k12.ga.us

Form 471 Application Number: 805658 Funding Request Number: 2203827

Funding Status: Not Funded

Category of Service: Telecommunications Service Form 470 Application Number: 757500000691055

Contract Number: N/A

Billing Account Number: N/A Service Start Date: 07/01/2011 Contract Expiration Date: 06/30/2019

Number of Months Recurring Service Provided in Funding Year: 12 Annual Pre-Discount Amount for Eligible Recurring Charges: \$67,502.88

Annual Pre-Discount Amount for Eligible Non-Recurring Charges: \$.00

Pre-Discount Amount: \$67,502.88
Applicant's Discount Percentage Approved by SLD: 87%
Funding Commitment Decision: \$.00 - Bidding Violation-SRC

Funding Commitment Decision Explanation: MR1: FRN modified in accordance with a RAL request. <><><><> MR2: The establishing Form 470 Application Number was changed at the request of the applicant. <><><> Consistent with FCC Order DA 12-260, the FCC has determined that your competitive bidding process was flawed due to improper service provider involvement in the competitive bidding process that lead to this contract. Therefore, funding is denied.

FCDL Date: 12/05/2012

Wave Number: 071

Last Allowable Date for Delivery and Installation for Non-Recurring Services: 09/30/2013

Consultant Name:

Consultant Number (CRN): Consultant Employer: